4-2-2012

State v. Sanchez Respondent's Brief Dckt. 38655

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38655
	)	
vs.	)	
	)	
HENRY SANCHEZ, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

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STATEMENT OF THE CASE

Nature Of The Case

Henry Sanchez appeals from his conviction for possession of methamphetamine.

Statement Of The Facts And Course Of The Proceedings

The state charged Sanchez with possession of methamphetamine with intent to deliver and possession of marijuana with intent to deliver. (R., pp. 36-37.) Sanchez filed a motion to suppress, claiming that his initial detention by officers and the subsequent search of his person were illegal. (R., pp. 60-61, 85-88.) The district court denied the motion after a hearing, concluding that officers had reasonable suspicion to stop Sanchez and that the search of Sanchez was justified by a condition of probation. (R., pp. 135-40.) Sanchez pled guilty to a reduced charge of possession of methamphetamine and the other charge was dismissed, and he preserved his right to appeal the denial of his suppression motion. (R., pp. 197-99; 9/13/10 Tr., p. 30, L. 4 – p. 31, L. 13; p. 46, Ls. 13-19.) The court imposed a sentence of seven years with two years determinate. (R., pp. 212-13.) Sanchez filed a timely notice of appeal. (R., pp. 240-42.)

ISSUES

Sanchez states the issues on appeal as:

A. Did the District Court err by denying the Appellant's Motion to Suppress Evidence?

B. Did the district court abuse its discretion when it imposed a sentence of seven years with 2 years fixed, 5 years indeterminate upon Mr. Sanchez following his plea of guilty?

C. Did the district court abuse its discretion when it denied Mr. Sanchez's Idaho Criminal Rule 35 (Rule 35) Motion For A Reduction Of Sentence?

(Appellant's brief, p. 2 (capitalization original).)

The state rephrases the issues as:

1. Has Sanchez failed to show error in the district court's conclusion that officers had reasonable suspicion to stop him?

2. Has Sanchez failed to show that the district court abused its sentencing discretion?

ARGUMENT

I.
Sanchez Has Failed To Show Error In The District Court's Conclusion That Officers Had Reasonable Suspicion To Stop Him

A. Introduction

The district court concluded that officers had reasonable suspicion to stop Sanchez after they saw him behaving suspiciously near a car in a parking lot and he fled from the officers when they approached. (R., p. 139.) On appeal Sanchez argues that officers' testimony that they believed Sanchez might be "messing with" or burglarizing a car was "conclusory" and should be disregarded because the officers did not more fully describe his activities or provide "independent factors" showing reasonable suspicion and, after disregarding what officers saw initially, fleeing alone was not sufficient to create reasonable suspicion. (Appellant's brief, pp. 4-5.) Sanchez's argument that the trial court should have disregarded part of the officers' testimony because it did not independently establish reasonable suspicion is without merit.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). "At a suppression hearing, the power to assess the

credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." State v. Stewart, ___ Idaho ___, ___ P.3d ___, 2012 WL 604165 at *1 (Idaho App., February 27, 2012) (citing State v. Valdez–Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999)).

C. Sanchez's Argument That The District Court Should Have Rejected Some Of The Testimony Of The Police Officers Because It Was "Conclusory" Or Lacking In "Independent Factors" Is Without Merit

It is well-settled that a police officer may, in compliance with the Fourth Amendment, make an investigatory stop of an individual if that officer entertains a reasonable suspicion that a person has committed, or is about to commit, a crime. Terry v. Ohio, 392 U.S. 1, 30-31 (1968); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009) (citing Florida v. Royer, 460 U.S. 491, 498 (1983)). The test for determining whether a seizure has occurred is whether, under all of the circumstances, the officer's words and actions would have conveyed to a reasonable person that the officer was ordering him or her to restrict his or her movement. California v. Hodari D., 499 U.S. 621, 628 (1991); State v. Willoughby, 147 Idaho 482, 486, 211 P.3d 91, 95 (2009). A person's flight from the police may itself be considered suspicious. Illinois v. Wardlow, 528 U.S. 119, 121 (2000).

In this case officers saw Sanchez and another individual near a car in a shadowed part of a parking lot after dark. (6/28/10 Tr., p. 8, L. 6 – p. 9, L. 4; p. 18, L. 17 – p. 19, L. 19; p. 9, Ls. 6-16.) The two men appeared to be trying to hide behind the car. (6/28/10 Tr., p. 18, L. 23 – p. 19, L. 1.) Sergeant Baker

thought they might be burglarizing or otherwise "doing something" to the car. (6/28/10 Tr., p. 9, Ls. 2-5.) Officer Rushing thought they might be "messing with" the car. (P.H. Tr., p. 5, Ls. 13-19.[1]) When police approached the two men fled. (6/28/10 Tr., p. 9, L. 5; P.H. Tr., p. 6, Ls. 14-21.) Officer Rushing approaching the car learned it was occupied, and the occupant asserted that the two men had been "harassing" him. (6/28/10 Tr., p.19, L. 21 – p. 20, L. 15; P.H. Tr., p. 6, L. 14 – p. 7, L. 15; see also P.H. Tr., p. 8, L. 13 – p. 9, L. 5.) Police detained Sanchez, one of the two men earlier seen, and learned that he was on probation for a DUI conviction. (Exhibit A; 6/28/10 Tr., p. 9, Ls. 6-25; p. 12, L. 23 – p. 15, L. 3; p. 20, L. 16 – p. 21, L. 15.) Suspecting a drug deal and that Sanchez had violated his probation by drinking alcohol, officers conducted a probation search of Sanchez and discovered three bags of marijuana and four bindles of methamphetamine. (6/28/10 Tr., p. 17, L. 11 – p. 18, L. 10; p. 21, L. 16 – p. 22, L. 17; P.H. Tr., p. 9, L. 17 – p. 13, L. 5.) A more detailed search at the jail uncovered more evidence of drug dealing. (P.H. Tr., p. 15, L. 24 – p. 17, L. 1.)

The circumstances established by the officers' testimony support the district court's finding of reasonable suspicion for the detention. (R., pp. 135-39.) Seeing two men crouching behind a car in a shadowed part of a parking lot after dark, who then flee when approached, provided reasonable suspicion of involvement in present or future criminal activity.

[1] The preliminary hearing transcript (designated herein as "P.H. Tr.") is included in the appellate record as an exhibit. It was considered by the trial court in relation to the motion to suppress. (6/28/10 Tr., p. 4, L. 19 – p. 7, L. 3; p. 24, L. 23 – p. 25, L. 1; R., pp. 135-37.)

Sanchez argues the district court erred because the officers' testimony was "conclusory" and therefore his activities other than fleeing must be disregarded, and fleeing alone did not provide reasonable suspicion. (Appellant's brief, pp. 2-6.) This argument ignores the applicable legal standard, however. Whether the officers had the requisite reasonable suspicion to detain him is determined on the basis of the totality of the circumstances. State v. Van Dorne, 139 Idaho 961, 964, 88 P.3d 780, 783 (Ct. App. 2004); State v. Gallegos, 120 Idaho 894, 897, 821 P.2d 949, 952 (1991) ("[T]he proper inquiry is to look at the totality of the circumstances and ask whether the facts available to the officers at the time of the stop gave rise to a reasonable suspicion, not probable cause to believe, that criminal activity may be afoot."). Even assuming that seeing the two men ducking down behind a car in a shadowed part of a parking lot after dark did not itself provide reasonable suspicion of a car burglary or other crime, certainly that in combination with the men's flight upon being approached did. Sanchez's argument that the officers' initial observations did not provide reasonable suspicion of a criminal activity and the flight considered separately did not provide reasonable suspicion of criminal activity is directly contrary to established law that the totality of the circumstances known to the officers must be reviewed.

Because Sanchez's argument is contrary to applicable law, and because the totality of the circumstances show officers had reasonable suspicion to detain Sanchez, Sanchez has failed to show error by the district court.

II.
Sanchez Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The court sentenced Sanchez to seven years with two years determinate upon his conviction for possession of methamphetamine. (R., pp. 212-13.) Sanchez moved for a reduction of his sentence based on a claim that he could not get into therapeutic community. (R., pp. 218-23.[2]) On appeal Sanchez asserts the district court abused its sentencing discretion. (Appellant's brief, pp. 6-10.) Review of the record shows Sanchez has failed to demonstrate any abuse of sentencing discretion.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court abused its discretion. Id. If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and the Court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

[2] Sanchez has not included any ruling by the district court on his Rule 35 motion in the appellate record. (See R., pp. 236-38 (granting thirty days to submit additional information in support of Rule 35 motion).)

C. Sanchez Has Shown No Abuse Of The District Court's Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). To establish that the sentence was excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Id. at 736, 170 P.3d at 401. In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). If the sentence was reasonable when imposed, to show an abuse of discretion in denying the Rule 35 motion, Sanchez must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Huffman, 144 Idaho at 203, 159 P.3d at 840.

The district court imposed a sentence of seven years with two fixed on Sanchez's conviction for possession of methamphetamine. (11/1/10 Tr., p. 61, Ls. 5-7.) It specifically considered the goals of sentencing. (11/1/10 Tr., p. 57, L. 23 – p. 58, L. 6.) The court noted three prior felony drug-related convictions, and that substance abuse counseling was provided at all three of those times. (11/1/10 Tr., p. 58, Ls. 12-18.)

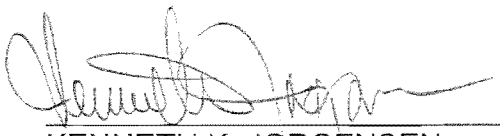
Sanchez argues his sentence was excessive because of "mitigating circumstances" including that he was a "very young man," this is his "first felony dui," and he expressed remorse. (Appellant's brief, pp. 7-8.) The record, however, shows that Sanchez was 59 years old (PSI, p. 1), was in fact convicted in this case of possession of methamphetamine and not DUI (R., p. 212), has three prior drug-related felony convictions and several misdemeanor convictions (PSI, pp. 3-4), and the sentencing court specifically found that Sanchez was "not willing to accept ... responsibility for this crime" (11/1/10 Tr., p. 60, Ls. 16-23; see PSI, p. 2 (denying any knowledge of controlled substances)). The "facts" Sanchez claims as mitigating circumstances are simply untrue.

The "fact" underlying his Rule 35 motion fares little better. In his motion Sanchez asserted that because he has been rated for community custody he did not qualify for the therapeutic community. (R., pp. 218-23.) He does not explain how reducing his sentence would necessarily make him eligible for the therapeutic community or even why participation in the therapeutic community is so important that his eligibility for it trumps everything else. (Appellant's brief, pp. 9-10.) Sanchez has failed to show any abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 2nd day of May, 2012.



KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of May, 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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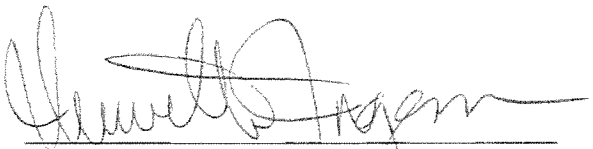

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